IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-06-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

CONTEMPT PETITION NO.253 OF 2000
and
SUB APPLN.NOs.160 & 483 of 2000
AND
W.P.NO.4775 OF 1998
and
WPMP.NOs.15226 and 15227 of 2000

Contempt Petition No.253/2000

S.K. Balasubramanian
S/o.S. Kandasamy .. Applicant

Vs.

1. K.M. Mohammed Ali
   S/o.K. Mohammed Abdul Khader,
   Managing Director,
   Khader Spinners Limited,
   Mettupadi Road,
   Benganbur, Dindigul.

2. K.P. Jamal Mohiuddin,
   Factory Manager,
   Sree Preethi Spinners,
   Main Road,
   M.M. Konilur,
   Dindigul District 624 005. .. Respondents

W.P.No.4775 of 1998

The Management of
Khader Spinners Limited,
M.M. Kovilur,
Dindigul 9 .. Petitioner

Vs.

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1. The Presiding Officer,
   Labour Court,
   Tiruchirapalli.

2. Thiru S.K. Balasubramaniam
   S/o/ Kandasami

3. Sree Preethi Spinners,
   rep. by its Factiory Manager,
   Main Road, M.M. Kovilur,
   Dindigul 624 005. .. Respondents

R3 impleaded as per order of
Court dated 19.6.2000 in WPMP.No.8686/2000

Contempt petition filed under Sections 10 & 12 of the Contempt of Courts Act to initiate contempt proceedings against the respondents for having disobeyed the order dated 15.6.1999 of this Court in W.M.P.2844 of 1999 in W.P.No.4775 of 1998 and punish them for having committed contempt of this Court.

Petition filed under Article 226of the Constitution of India for the issuance of writ of certiorari calling for the records of the first respondent in I.D.No.166/95 and quash the impugned award dated 8.11.1997.

For Petitioner in
WP & Respondent-2 in Contempt Appln. : Ms.R. Vaigai

For Respondents in
WP & Applicant in Contempt Appln. : Mr.R. Parthiban

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COMMON ORDER

The Contempt Application has been filed by the Workman (Respondent No.2 in W.P. No.4775 of 1998) alleging violation of Order dated 15.6.1999 in WMP No.2844 of 1999 arising out of W.P. No.4775 of 1998.

2. The writ petition filed by the Management is directed against the award of the Labour Court in I.D.No.166 of 1995 directing reinstatement of Respondent No.2 in the writ petition with backwages.

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3. The aforesaid industrial dispute arose on the basis of an application filed by Respondent No.2 under Section 2-A(2) of the Industrial Disputes Act. Undisputedly the present Respondent No.2 was working under the petitioner since 1987. In his application under Section 2-A(2) it was alleged by him that he was not permitted to work on and after 23.6.1992 and subsequently a charge-memo dated 28.6.1992 was issued to which he had given a detailed explanation. Since he was not allowed to resume duty, he filed application before the Assistant Commissioner of Labour (Conciliation). However, the Management refused to give him job forcing him to file application under Section 2-A(2).

4. In the counter filed on behalf of the Management before the Labour Court, it was contended that the applicant before the Labour Court was merely continuing as a temporary workman. On 22.6.1992 he had come out from the place of work without informing anybody and without any prior permission and near the main gate of the factory he asked the watchman to get cigarette for him. Accordingly, the watchman went and purchased cigarette. At that time, the Security Officer was told that cigarette was purchased on the request made by the workman. Thereafter, on the direction of Security Officer, the Watchman Vellaichamy and another Gate Keeper Kaliaperumal effected search and found match sticks and cigarettes and butts of cigarette inside the power house and accordingly the watchman informed the matter in writing to the management. The workman did not turn up for work thereafter from 23.6.1992 and he had not sent any leave letter. Subsequently when he came on 28.6.1992, a charge-memo dated 28.6.1992 was served on him alleging about the aforesaid incident. The workman received such charge-memo and went away and subsequently he furnished explanation on 29.6.1992, but he did not turn up for duty nor he had given any leave letter for 15 days. In the meantime, a notice was received from the Labour Officer. In course of conciliation, the Management narrated the aforesaid aspects, and therefore, it was advised that a domestic enquiry should be held. The allegation that the petitioner was refused permission to work was denied and it was stated that he had voluntarily absented without any leave and he had abandoned the job. It was further asserted that inspite of several letters and reminders, the workman had not resumed duty.

5. On the basis of the aforesaid claim application and the counter affidavit, the Labour Court framed four issues. It came to the conclusion that the workman had not voluntarily abandoned the work and on the other hand he was prevented from joining the duty. In view of the aforesaid conclusion, it was further held that the Industrial Dispute was maintainable. The allegations to the effect that the workman had sent the watchman

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to obtain cigarettes and cigarette butts and match sticks were found inside the power house were disbelieved by the Labour Court and ultimately an award was passed directing reinstatement with backwages. The said award is under challenge in the present writ petition.

6. Learned counsel appearing for the petitioner has submitted that in view of the evidence on record, the conclusion of the Labour Court to the effect that the workman was prevented from doing duty and had not abandoned the job, cannot be sustained. It has been further submitted that the allegations contained in the charge-memo regarding purchase of cigarettes should have been accepted by the Labour Court. It has been further submitted that in the facts and circumstances of the case, the Labour Court should not have directed for reinstatement of the workman and direction for backwages should not have been issued.

7. Learned counsel appearing for the respondent workman has submitted that award of the Labour Court is based on discussion of relevant evidence on record and the findings should not be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

8. Law is well settled that the High Court while considering the question of award of the Labour Court, it is not functioning as an appellate authority and the award of the Labour Court is not liable to be reviewed on the basis of re-appreciation of evidence on record. The High Court can interfere with the award only if it is found that there is error of law apparent on the face of record or there is no evidence in support of the conclusion arrived at by the Labour Court. The Court is more concerned with the decision making process rather than the decision itself and merely because the Court is inclined to take a different view of the matter by re-appreciating the evidence, such award cannot be interfered with. Keeping in view the aforesaid principles of well settled law, I hardly see any scope for interference so far as the findings are concerned in the present case.

9. The Labour Court has referred to the oral as well as documentary evidence adduced on either side and has come to a particular conclusion by appreciation of evidence. All the relevant materials on record have been referred to and the Labour Court has come to a particular conclusion. It cannot be said that there is any perversity in the conclusion reached by the Labour Court nor it can be said that any material relevant evidence has been ignored. In the absence of any perceptible illegality in the award passed by the Labour Court, there is no scope for coming to any other conclusion on the findings rendered by the Labour Court.

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10. Learned counsel for the Management has submitted that even assuming that the award of the Labour Court is otherwise sustainable so far as the findings are concerned, in view of the background of the case and the subsequent events, which are apparent from the connected contempt proceedings, the High Court should interfere with the direction regarding reinstatement in service with backwages and on the other hand, the High Court may award sufficient compensation.

11. Learned counsel appearing for the workman, who has filed the connected contempt application, on the other hand submitted that the materials on record in the connected contempt proceedings clearly indicate about the obdurate attitude of the management and any interference in the award by awarding compensation in lieu of reinstatement would amount to grant of a boon to the management for its obdurate attitude.

12. In view of the above submission, it is necessary at this stage to refer to the connected contempt petition which was heard along with the writ petition. The said contempt petition has been initiated on the basis of the application filed by the workman under the following circumstances:-

While entertaining the writ petition filed by the management, an order of interim stay had been passed by the learned single Judge of this Court on 1.4.1998. Subsequently, the workman filed W.M.OP.Nos.19554 and 19555 of 1998 to vacate the order of stay and for issuance of appropriate direction regarding payment under Section 17B of the Industrial Disputes Act. After considering the applications, the learned single Judge by order dated 9.11.1998 directed the management to deposit Rs.88,000/- and also to pay at the rate of Rs.1300/- to the workman with effect from January, 1998. However, the management stated that it was willing to take back the workman to the service and on the basis of such submission, this Court directed the workman to join duty. Thereafter, the workman sent a telegram to the management on 4.12.1998 indicating his willingness to join duty and reported for duty on 7.12.1998. However, the workman was told that he should sign a letter accepting the salary of Rs.1,300/-, but the workman wanted to take counsel's advice. Thereafter, he informed that since he was joining duty as per the Court's order, there is no necessity for signing any letter. Ultimately he joined duty on 12.12.1998 and continued to work till 16.12.1998. It is asserted in the contempt petition that the workman found a note dated 12.12.1998 written by the Electrical Engineer to the effect that the workman should be sent out again on some pretext. The management issued charge-sheet against the workman alleging that he had misbehaved with his superior and had not functioned

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properly. A reply was sent denying the allegations and stating that the workman should be allowed to work. Under such circumstances, the workman filed W.M.P.No.2488 of 1999 seeking modification of the order dated 9.11.1998 with a prayer to direct the management to pay the workman the last drawn wages in accordance with Section 17B. The management had filed a counter affidavit, but at the time of hearing of such application, the Management agreed to allow the workman to work and also agreed that it would not proceed with any enquiry. On the aforesaid basis, the learned single Judge on 15.6.1999, directed the management to pay at the rate of Rs.1300/- with effect from January 1999 upto June 1999. The Court also recorded that the management was willing to allow the workman to rejoin duty and not to proceed with the enquiry. W.M.P.No.2844 of 1999 was accordingly disposed. It is also asserted in the contempt application that due to the delay in receiving copy of the order, the workman reported duty only on 29.7.1999. The management paid the workman only the last drawn wages even though the workman rejoined duty. subsequently the workman filed W.M.P.No.24787 of 1999 praying that the workman should be paid wages at the current rate. Such application was allowed on 7.12.1999 with a direction that current wages should be paid to the workman from 1.12.1999. It is further alleged in the contempt application that on 9.10.1999 the workman was stopped at the gate and he was not paid salary for September, 1999. A representation dated 9.10.1999 was made. The management gave reply on 12.10.1999 directing the workman to report within 24 hours. The workman received such letter on 16.10.1999 and sent a telegram indicating that he would report for duty at the first shift on the very next day. The workman was marked absent from 9.10.1999 till 16.10.1999. On 1.12.1999 the Mill did not carry on any work an the workers were laid off but were paid wages. However, the applicant in the contempt application was not paid any wages for the month of December, 1999, necessitating a representation from the workman. It is further alleged that the second respondent issued a show cause notice alleging that on 3.2.2000 the workman did not report for duty without any permission and misbehaved with the superior officer. The workman submitted his explanation on 4.2.2000 denying the allegations and explaining that on 3.2.2000 he was delayed by five minutes on account of disruption of bus service and he was asked to come to duty on 4.2.2000 which was his weekly off day. However, on 4.2.2000, when he reported for work, he was given the suspension order and the show cause notice. However, the second respondent issued charge sheet on 18.2.2000 levelling false allegations. (It may be clarified that the second respondent is running the Mill as a lessee from the original owner,the writ petitioner in the connected writ petition). The workman filed a reply by stating that he was unnecessarily being harassed as he has filed proceedings before the High Court.

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Subsequently, he had sent another letter stating that there was no occasion for him to misbehave and the allegations were false. The workman therefore requested that the charge-sheet should be dropped and he should be permitted to work without any hindrance. Subsequently, on 6.3.2000, the Factory Manager of Shree Preethi Mills (the second respondent in the contempt petition) wrote a reply stating that the explanation was not acceptable and domestic enquiry would be held. The workman wrote on 15.3.2000 for postponement of enquiry on account of his illness and the enquiry had been adjourned to 25.3.2000. Narrating the aforesaid subsequent events, the contempt petition has been filed on 23.5.2000. In the aforesaid background, it has been asserted that the respondents are determined not to permit the applicant to work and the first respondent was victimizing him in the garb of another charge sheet and suspension from 4.2.2000 through the second respondent. It is further claimed that the first respondent has deliberately misled this Hon'ble Court into passing the order dated 15.6.1999 and has disobeyed and violated the said order of this Hon'ble Court and the second respondent is acting under the first respondent as an agent.

12. Separate counter affidavits have been filed by Respondents 1 and 2 in the contempt application. Respondent No.1 is the Managing Director of Khader Spinner Limited (writ petitioner in the connected writ petition) and Respondent No.2 is the Factory Manager of Sree Preethi Spinners, which is running the factory on the basis of the lease granted by Khader Spinner Limited.

13. Allegation in the contempt application is to the effect that the order dated 15.6.1999 has been violated as, under the said order, the High Court was given to understand that the workman would be taken back in service without any problem and yet the subsequent conduct of the respondents 1 and 2 indicated gross violation of such order.

14. In the counter affidavits filed on behalf of the respondents 1 and 2, more particularly of the first respondent, it has been indicated that the order dated 15.6.1999 was relating to the existing domestic enquiry and the management had said it would not proceed with such enquiry. However, the subsequent domestic enquiry relates to a subsequent event which occurred during the running of the factory by Sree Preethi Spinners. The first respondent has therefore submitted that there has been no violation of the Court's order dated 15.6.1999. The second respondent has also accordingly submitted that since the enquiry relates to a subsequent event, no contempt has been committed by the second respondent.

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15. In view of the narration of the events and the stand taken by the respondents, it is difficult to come to a factual conclusion that there was any wilful violation or deliberation of the Court's order. Initiation of subsequent disciplinary proceedings is in respect of an incident alleged to have taken place on a subsequent day, and therefore, it cannot be said that by initiating such proceedings either the first respondent or the second respondent has committed any contempt of the Court's order. However, narration of the events and various alleged incidents clearly indicate the atmosphere of mutual distrust existing between the management and the workman. Under these circumstances, it is evident that the management has lost confidence in the workman and it is equally evident that the workman has lost trust in the management. In such circumstances, in order to avoid further litigations, it would be more appropriate to modify the order of the Labour Court regarding reinstatement and to direct payment of adequate compensation.

16. It is evident that a sum of Rs.88,000/- has been deposited by the management. It is further evident that the workman had worked for sometime and had been paid certain amount either under Section 17-B or towards wages. The Labour Court had directed for reinstatement with backwages. Subsequently, obviously there must have been increase in wages.

17. Having regard to all these aspects, instead of directing reinstatement with backwages, the writ petition is disposed of with the observation that in addition to a sum of Rs.88,000/- which should be withdrawn by the workman along with accrued interest if any, the writ petitioner would be liable to pay a further sum of Rs.3,00,000/- (Rupees Three lakhs) to the workman towards compensation in lieu of reinstatement with backwages.

18. The writ petition is disposed of subject to the aforesaid observation and the contempt petition is closed. There would be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
The Presiding Officer,
Labour Court,
Tiruchirapalli.

+ 1 cc to Mr.R.Parthiban, Advocate SR 23773

JUDGMENT IN CONT.PETN.NO.253/2000

AND WP.NO.4775/98

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